No. 72-5563

Paul E. Cooper, Petitioner,

v.

United States

Oct. 13, 1972 - Petition for writ of certiorari filed. NOT PRINTED.

Vide: 72-483, 72-485, 72-525, 72-5454

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-483

FRANCIS R. SALAZAR, PETITIONER

v.

UNITED STATES OF AMERICA

No. 72-485

GEORGE I. NORMAN, JR., PETITIONER

v.

UNITED STATES OF AMERICA

No. 72-525

DONALD S. COOPER, PETITIONER

v.

UNITED STATES OF AMERICA

No. 72-5454

DELMAR E. COOPER, PETITIONER

v.

UNITED STATES OF AMERICA

No. 72-5563

PAUL E. COOPER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is reported at 464 F. 2d 648.

JURISDICTION

The judgment of the court of appeals was entered on July 12, 1972. A petition for rehearing was denied on August 25, 1972. The petitions in Nos. 72-483, 72-485, and 72-5454 were filed on September 22, 1972. In Nos. 72-525 and 72-5563, Mr. Justice White extended the time for filing the petitions, and they were timely filed on September 29, 1972 and October 13, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether 18 U.S.C. 656 was properly applied to petitioners' conduct as evidenced at trial (raised in all petitions).

2. Whether petitioners were properly joined under Rule 8, F.R.Crim.P. (Nos. 72-483 and 72-485), and whether the denial of motions for severance under Rule 14, F.R.Crim.P., exceeded the trial court's discretion (Nos. 72-483, 72-485, and 72-525).

3. Whether petitioner Donald Cooper's testimony was improperly limited (No. 72-525).

4. Whether the trial court erred in declining to give a proffered instruction defining the term "bank" (No. 72-483).

5. Whether petitioners' conspiracy convictions were improper (Nos. 72-483, 72-525, and 72-5454).

6. Whether the superseding indictment was properly prepared and whether the grand jury proceedings should have been recorded (Nos. 72-483 and 72-525).

STATEMENT

Petitioners Donald Cooper, Delmar Cooper, Paul Cooper and Francis Salazar were charged in a thirteen-count indictment with having misapplied funds of a federally insured bank in violation of 18 U.S.C. 656, and having conspired to violate that statute.[1] Petitioner Norman was charged as an aider and abettor (18 U.S.C. 2). Five of the substantive counts were disposed of by dismissal or severance. Following a jury trial in the United States District Court for the District of Colorado, petitioners Delmar Cooper, Donald Cooper and Salazar were convicted on the conspiracy count.[2] The three Coopers and Salazar were convicted on count five (the Alpert-Cooper loan). Petitioners Donald Cooper, Delmar Cooper, and Norman were convicted on counts eight and nine (the Wangsgard and Lakewood loans). Petitioners Donald Cooper, Delmar Cooper, Salazar and Norman received concurrent sentences of three years' imprisonment on each of the counts for which they were convicted. In addition, petitioners Delmar Cooper and Donald Cooper were fined $1,500 on each of four counts; petitioners Salazar and Norman, $2,000 on each of two counts. Petitioner Paul Cooper's sentence of two years' imprisonment was suspended and he was placed on probation for two years. In addition

[1] One Allen Hurt was named as a co-conspirator but not indicted.

[2] Motions for judgment of acquittal on this count were granted as to Paul Cooper and Norman (T. 1641).

he was fined $2,000. The court of appeals affirmed (464 F. 2d 648).

In summary form, the evidence showed that petitioners Donald Cooper, Delmar Cooper, Paul Cooper and Salazar were officers and directors of the now defunct Rocky Mountain Bank of Lakewood, Colorado.[3] They were found to have misapplied the monies of Rocky Mountain Bank by making or causing to be made loans for their benefit through strawmen or through corporations which they owned or were in the process of acquiring, without disclosing to the bank their interest in the loans. Petitioner Norman aided and abetted in certain of these transactions.

The evidence with respect to count five of the indictment showed that in February 1966, petitioner Salazar induced Harvey Alpert and Michael Cooper (no relation to petitioners) to obtain a $65,000 loan from the Rocky Mountain Bank as a personal favor to Salazar.[4] The loan papers indicated the money was for "new bus-

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[3] Together with co-conspirator Hurt, petitioners dominated the Board of Directors of the bank. The bank's Loan and Discount Committee was throughout the pertinent period composed almost exclusively of bank director petitioners.

The Rocky Mountain Bank was closed on January 30, 1969, by state banking authorities (T. 1053).

[4] The loan was approved by the Loan and Discount Committee. On the committee at the time were Donald Cooper, Paul Cooper and Salazar. Delmar Cooper was an alternate member and secretary. The loan was also approved by the board of directors with all petitioner directors present.

The $65,000 was initially given to Donald and Delmar Cooper, who gave Alpert and Michael Cooper a note guaranteeing repayment. Neither Alpert nor Michael Cooper received any proceeds from the loan nor did they make any payments on the loan.

iness in the construction field." Salazar deposited the funds in his trustee account at another bank and gave $55,000 of this money to the Denver Revival Tabernacle, a Cooper brothers enterprise,[5] to pay off an overdue Tabernacle loan made by another bank. Of the remaining $10,000, Salazar deposited $3,000 in his personal account, took $5,000 in cash, and used $650 to replace a previously drawn check. The Alpert-Cooper loan was later repaid by a $5,000 Westland Industrial Bank bank money order drawn on the bank's account,[6] a $5,000 renewal by Alpert and Michael Cooper, and a loan to Paul E. Cooper for the $55,000 balance plus accrued interest.[7] The $5,000 renewal was eventually paid by petitioner Salazar[8] (T. 140, 148-151, 220-246, 355-400, 582-583, 666-698, 806-807, 1423-1505; GX 2A-2C, 4A-4C, 12, 100-118A, 500-501, 503, 515-522, 525-526, 529, 532, 536-537, 539-541, 543A, 544-554, 558, 566, 566A, 567, 571, 578A-578I).[9]

The evidence adduced on counts eight and nine showed that on February 24, 1967, petitioners approved an $81,000 unsecured loan to one Cloyd Wangsgard,

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[5] Donald, Delmar and Paul Cooper were directors of the Tabernacle.

[6] Until May 1969, the Westland Industrial Bank was controlled by petitioner bank directors.

[7] As discussed *infra*, p. 9, the balance due on this note was settled by a transfer to the Rocky Mountain Bank of the Denver Revival Tabernacle at a highly inflated price.

[8] The renewal was also made as a personal favor to Salazar for the Coopers. Alpert and Michael Cooper made no payments on the renewal.

[9] "T." refers to the trial transcript, and "GX" refers to the government exhibits.

and another $81,000 loan to Lakewood Medical Center, Inc.[10] These loans were made to enable Donald and Delmar Cooper to purchase an interest in the Lakewood Medical Center building owned by a Norman family corporation, Medical Enterprises, Inc. A secondary purpose was to repay funds which Donald and Delmar Cooper had earlier secured from the bank through the use of one J. Robert Jensen as a straw-

Petitioner Norman informed Cloyd Wangsgard, his accountant, that he had borrowed to capacity at the Rocky Mountain Bank, and persuaded Wangsgard to secure the loan for Norman's use. Wangsgard was given a hold harmless agreement signed by Norman and Delmar and Donald Cooper. Petitioner Norman also induced his brother-in-law, Richard Head, to assist in forming Lakewood Medical Center, Inc. Norman installed Head as president, and directed him to secure a loan for Lakewood Medical Center from the Rocky Mountain Bank in the amount of $81,000.

Both the Wangsgard and the Lakewood Medical Center loans were disbursed for the benefit of petitioners Norman and Donald and Delmar Cooper. From the proceeds of the two loans, $37,100 was deposited to the account of Greater Leasing Company, a corporation of which Delmar and Donald Cooper were the principal stockholders, and was used as the source of funds to repay the Jensen loan. The remainder, after having

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[10] At this time $81,000 was the greatest amount which the bank could loan to any one borrower.

[11] See note 15, *infra*.

been disbursed in a manner designed to conceal the source of the funds, was used to purchase the Medical Center from Medical Enterprises, Inc., of which Norman's wife was the principal stockholder.[12] Title to the property was transferred to Lakewood Medical Center, Inc., Donald and Delmar Cooper, and Norman's wife.

At the time of trial, the Rocky Mountain Bank had suffered a loss of approximately $60,000, including interest, on the Wangsgard loan.[13] Of payments made on

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[12] The funds were transferred by checks, signed by Head, drawn on the Lakewood Medical Center Account. The $37,100 check was deposited directly to Greater Leasing's account. A $124,459.21 check was used to purchase a cashier's check, payable to Wangsgard, who at Norman's direction exchanged the check for five money orders payable to Real Estate, Inc. Three of the money orders were deposited to the account of Norman's wife. One money order was exchanged for two cashier's checks payable to Norman's wife. The fifth money order was exchanged for five cashier's checks payable to Norman. The various funds were then used for the purchase of the Medical Center.

[13] On April 1, 1968, the $78,000 balance on this loan was paid by two checks, each in the amount of $39,000. One was signed by Victor Lederman and the other, by Marvin Lederman. Each check specified that it was for the purchase of a one-half interest in the Wangsgard note. On the same day, two unsecured commercial loans of $39,000 were made to Victor and Marvin Lederman by Delmar Cooper with Committee approval. The Ledermans asked for and received a written guarantee of repayment and purchase with full recourse. A few days later the Ledermans were contacted by the State Banking Commissioner. They thereafter returned the Wangsgard note, which necessitated the return of the Lederman checks and the repayment of the Lederman loans. This repayment was accomplished by a $20,395.40 cash payment (source not revealed) and the proceeds of a $59,000 unsecured loan to Randall Wright, made by Delmar Cooper with Committee approval. Only

the loan, five were made by checks drawn on the Lakewood Medical Center account and signed by Norman; two were made by checks drawn on the Greater Leasing Company account; and one was made by a charge to the account of Mediterranean Spa, Ltd., whose corporate officers were Donald and Delmar Cooper and Norman (T. 250, 252-253, 258-261, 265-269, 303-304, 318, 401-405, 410-418, 427-429, 432, 435-437, 441-442, 463, 472-487, 957-958, 1093; GX 5C, 8A, 8C, 9G, 700, 726, 800, 801A, 803A, 804-808, 811-815, 817-818, 819B, 821B, 822B, 823B, 824B, 825B, 826B, 828, 829B, 830B-830I, 831A-831C, 832, 833).

In addition to the transactions previously described, further evidence of the conspiracy disclosed a series of loans made by the bank in October 1965,[14] and in July and September 1966, and April 1967.[15]

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three payments were made on the Wright loan, leaving a balance owing as of December 31, 1968 of $58,397.67.

At the time of trial, payments on the $81,000 loan to Lakewood Medical Center were current.

[14] These loans were to enable Salazar, Donald and Delmar Cooper and Hurt to purchase a beer and liquor distributorship in Safford, Arizona, and were made to petitioner Paul Cooper and others (T. 97-100, 109-122, 152-156, 159-170, 180, 182, 210-213, 224-225, 1452-1457, 1459-1460, 1747, 1803, 1969-1970, 2054, 2060-2061, 2063, 2065-2066; GX H, I, 1B, 6, 10, 10A-10G, 10K, 10L, 10N, 100, 100-118A, 122, 200-226, 233-296, 300-316, 320, 324, 326, 328, 332, 336, 340, 344, 348, 352, 354-355, 357, 359-360, 370, 372, 400-407, 412, 416, 420, 422, 426).

[15] These loans were made to J. Robert Jensen, who, at petitioner Norman's request, obtained them for the benefit of petitioners Salazar and Donald Cooper. These loans were variously deposited for the account of, and repaid by loans obtained by, Greater Leasing Company and Westland Industrial Bank, corporations controlled by petitioner bank directors and involved in the Alpert-Cooper, Wangsgard and Lakeland loans (T. 232-234, 700-702,

In December 1968, knowing that the bank might be sold and that it was in danger of being closed, the bank director petitioners transferred to the Rocky Mountain Bank the real property of the Denver Revival Tabernacle, a Cooper brothers enterprise, in satisfaction of a $275,000 balance owing on loans made by the bank to Paul Cooper,[18] Donald Cooper's wife, the Denver Revival Tabernacle, Westland Industrial Bank, and Motels, Inc., another Cooper enterprise. The fair market value of the property was approximately $105,000 (T. 519-523, 526-527, 537, 967, 971, 978-981, 1079-1083, 1179, 1524; GX 3, 100-115, 116, 118, 118A, 121).

ARGUMENT

1. Petitioners contend that it was improper to apply 18 U.S.C. 656 to their conduct, arguing that there could be no misapplication of funds because allegedly *bona fide* borrowers capable of repaying the loans were involved in the transactions. But the stand-in borrowers obtained by petitioners were *bona fide* only in the sense that they were real persons. The evidence clearly disclosed a course of conduct whereby petitioner bank directors exploited their positions as bank directors in order to obtain bank funds for their benefit without disclosing to the bank their interests in these loans, which were made to individual strawmen procured by them and by petitioner Norman, and to corporations in which their interests remained undisclosed.

750-753, 1338-1346, 1477-1483, 1775, 1781, 1786; GX FRS-L, FRS-W, 7, 7A, 600 series, 700 series, 804, 806-808, 808A, 808B, 1101, 1103, 1105).

[18] This loan had been used to repay the balance on the Alpert-Cooper note.

The aim of the statute, to prevent abuse of the authority enjoyed by bank directors regarding the use and disbursement of bank funds, properly applies to the situation disclosed by the evidence summarized above. Thus, the court properly instructed the jury that a willful misapplication under Section 656 occurs when a bank officer causes a loan to be made for his own benefit and conceals his interest in the loan from the bank. *United States* v. *Fortunato*, 402 F. 2d 79, 80-81 (C.A. 2), certiorari denied, 394 U.S. 933.[17] Moreover, the court also properly instructed, contrary to petitioner Donald Cooper's assertion (Pet. No. 72-525, p. 10), that such misapplication must be done with an intent to injure or defraud the bank (T. 2689-2690). See *United States* v. *Mullins*, 355 F. 2d 883, 886 (C.A. 7), certiorari denied, 384 U.S. 942; *Giragosian* v. *United States*, 349 F. 2d 166, 168 (C.A. 1).[18]

Petitioner Norman likewise contends that application of Section 656 to his conduct constitutes an unwarranted extension of the statute to a financially sound and acceptable activity, *i.e.*, the use of nominees to secure loans. This objection, however, misconceives both

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[17] We do not read the Second Circuit's recent decision in *United States* v. *Docherty*, No. 72-1299, decided October 31, 1972, as having altered this standard. See note 19, *infra*.

[18] Contrary to petitioner Paul Cooper's contention (Pet. No. 72-5563, p. 1), it is unnecessary in a prosecution under Section 656 to prove that the bank actually suffered any loss. *United States* v. *Fortunato*, *supra*, 402 F. 2d at 81; *Golden* v. *United States*, 318 F. 2d 357, 360-361 (C.A. 1); *Benchwick* v. *United States*, 297 F. 2d 330, 334 (C.A. 9). However, as noted above, the bank did suffer a loss on the Wangsgard loan and on all those, including the Alpert-Cooper loan, satisfied by the transfer of the Tabernacle property at a grossly inflated valuation.

the reach of the statute and its application to the particular circumstances of this case. Petitioner was not convicted for the mere use of nominees to obtain bank monies.

The Wangsgard loan, on which the bank had suffered a loss of approximately $60,000 at the time of trial, was obtained through the active procurement of petitioner Norman for the benefit of petitioner bank directors Donald and Delmar Cooper. Norman, along with the Coopers, executed a hold harmless agreement which was not brought to the attention of the bank. Similarly, the loan to Lakewood Medical Center was procured at the behest of Norman and the proceeds of the loan were used to benefit Donald and Delmar Cooper. In both instances, the interests of the Coopers in these loans were concealed with Norman's assistance. Thus, the culpable conduct was not the mere use of nominees, but rather Norman's aiding and abetting of the misrepresentations which enabled petitioner bank directors to exploit their positions to obtain benefits which were concealed from the bank.[19]

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[19] In *United States* v. *Docherty, supra,* note 17, Docherty was convicted of aiding and abetting a violation of 18 U.S.C. 656. He had obtained numerous loans for the benefit of a friend, an officer of the bank who had sought Docherty's assistance in obtaining the loans, advising him that, due to the bank's policy, he could not personally apply for the loans. The court concluded that Docherty neither sought nor obtained any personal gain, nor did he misrepresent the purpose of any loan. Moreover, there was insufficient evidence to establish Docherty's knowledge of the principal's "willful misapplication" or a desire to facilitate that activity, as required in the prosecution of an aider and abettor. The court also concluded that an intent to injure or defraud the bank was an

Petitioners' contention that the term "misapplication" is so indefinite as to render 18 U.S.C. 656 unconstitutionally vague has been rejected. See *United States* v. *Archambault*, 441 F. 2d 281, 283 (C.A. 10); *United States* v. *Fortunato, supra*, 402 F. 2d at 81. The term is sufficiently precise, conveying as it does the notion of misuse of bank funds, to apprise those like petitioners that exploitation of positions as bank officers for the purpose of obtaining bank monies by misrepresentation is prohibited conduct.

2. Petitioners contend, for a variety of reasons, that their motions for severance were improperly denied.

a. Petitioner Norman contends (Pet. No. 72-485, pp. 16-27) that joinder under Rule 8, F.R.Crim.P., was improper because he was indicted on only five of the eight counts, one of which (the conspiracy count) was dismissed as to him. He also points to the fact that two of his co-defendants were not named in any of the counts on which he was indicted. Moreover, he contends that the joinder permitted much evidence unrelated to him

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essential element of the offense, and that there was insufficient evidence of such an intent.

Here, on the other hand, petitioner Norman, as an aider and abettor, actively facilitated the misrepresentation which enabled him and the Coopers to obtain the bank funds. Norman's intricate disbursement of the loan proceeds certainly supported the inference that he knew of the Coopers' efforts to deceive the bank, and intended to facilitate that effort by concealing the source of funds. Furthermore, the bank ultimately suffered a substantial loss on this loan, as a result of the manipulations of petitioners. This evidence was sufficient on the question of Norman's intent to injure or defraud to permit submission of the various counts to the jury.

to be considered by the jury and that the sheer volume of such evidence, once the conspiracy count was dismissed, prejudiced his cause. He also argues that, with the dismissal of the conspiracy charge, evidence previously admitted against him became inadmissible and that no instruction could have cured the improper submission of such evidence. Thus he argues that following the dismissal of the conspiracy count, a severance should have been granted under Rule 14, F.R.Crim.P. Finally, he contends that a severance should have been granted due to the announced intention of co-defendant Donald Cooper to testify that he had taken certain actions with respect to the loan transactions because of the financial problems generated by petitioner Norman's conviction in a Colorado state court.

It is clear that the initial joinder of the defendants under Rule 8(b), F.R.Crim.P., was permissible since the indictment alleged joint participation in the same transaction or series of transactions. *Schaffer* v. *United States,* 362 U.S. 511, 514. Joinder was not improper because petitioner Norman was not charged in each count. Rule 8(b) expressly provides that "all of the defendants need not be charged in each count." It does not require all defendants to be charged jointly in even one of the offenses charged in the indictment. Cf. *United States* v. *Hoffa,* 349 F. 2d 20 (C.A. 6), affirmed, 385 U.S. 293.

Since the initial joinder was proper, any subsequent severance was controlled by Rule 14, F.R.Crim.P., which provides for separate trials where the defendant demonstrates prejudice from the joinder. That the

conspiracy count was dismissed as to petitioner Norman did not require severance here in the absence of such a showing. *Schaffer* v. *United States, supra,* 362 U.S. at 514-516. Although petitioner Norman maintains that, in light of the dismissal of the conspiracy count, much otherwise inadmissible evidence might have been considered against him by the jury, it is clear that the proof was "carefully compartmentalized" as to petitioner. *Schaffer* v. *United States, supra,* 362 U.S. at 515. The evidence adduced at trial and specifically related to petitioner's activities was properly admissible on the four substantive counts before the jury involving him. Moreover, the court expressly instructed the jury not to consider any evidence against petitioner Norman other than that adduced on the counts under which he was charged (T. 2602-2603). The jury's acquittal of petitioner Norman on counts six and seven indicates its ability, in accordance with the court's instructions, to segregate the evidence adduced against petitioner. Under these circumstances, as in *Schaffer,* there was no misjoinder.[20]

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[20] The court was advised during the third week of trial that the defendant Donald Cooper would testify that he became involved in the loans to Robert Jensen, the transactions charged in counts six and seven of the indictment, because petitioner Norman had been convicted in state court and could not, therefore, apply for a license renewal for a radio station to which the bank had loans outstanding. Greater Leasing, in which Jensen had an interest, was attempting to acquire the radio station and the theory of Cooper's defense to count seven was that he had participated in the loan to assure that the renewal was obtained and thereby protect the bank's interest. The court would not permit Cooper to refer to Norman's prior conviction and suggested instead (T. 1724) that Cooper

b. The contention of petitioner Salazar, who was charged in the conspiracy count and six substantive counts,[21] that joinder was improper under Rule 8(b) because the indictment failed to allege the joint participation of the various defendants is wholly without merit. In addition to the discussion above, we point out that the various overt acts alleged under the conspiracy count also formed the basis for the charges on the substantive counts. Each substantive count under which Salazar was charged also alleged participation by certain of the co-defendants. It is thus clear that the indictment alleged joint participation in the same transactions or series of transactions and that joinder under Rule 8(b) was therefore permissible.

c. Petitioner Donald Cooper's contention that a severance was required because of allegedly prejudicial publicity involving co-defendant Salazar is answered in the opinion of the court of appeals upon which we rely. See Pet. No. 72-525, App. A, pp. 15-16.

3. Petitioner Donald Cooper also contends that the

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testify that he became involved because Norman could not participate in the license renewal. Cooper testified that due to "extenuating circumstances," an "emergency situation involving Norman" (T. 1972-1976), it became necessary for him to approve the loans to protect the bank's best interests (T. 1719-1725, 1733-1737, 1772, 1775, 1779-1780, 1808-1815, 1859-1862, 1881-1884, 1888-1898, 1916-1925, 1972-1976). We think it clear that these references conveyed no intimation of wrongdoing on Norman's part and therefore were not prejudicial. Thus, this testimony did not require that the court grant a severance under Rule 14. In any event, these allegedly prejudicial remarks were adduced with respect to counts six and seven, on which Norman was acquitted.

[21] A motion for judgment of acquittal was granted on two of these counts (T. 1642-1643).

limitation imposed on his testimony with respect to the prior conviction of petitioner Norman (*supra*, note 20) constituted reversible error. As the trial court noted, however, Donald Cooper's presentation of his defense to count seven, on which he was acquitted, was not jeopardized because he could not specifically refer to the fact of Norman's conviction. He was permitted to point out to the jury that he had become involved in the transaction for the purpose of obtaining a renewal of the radio station's license because Norman could not participate in the license renewal (T. 1719-1725, 1733-1737, 1772, 1775, 1779-1780, 1808-1815, 1859-1862, 1881-1884, 1888-1898, 1916-1925, 1972-1976). It was not the reason therefor—*i.e.*, Norman's conviction—that was significant to the theory of defense.[22]

4. Petitioner Salazar contends that the court improperly declined to give his proffered instruction that the alleged concealment of the interests of the defendant bank officers and directors must have been "from a majority of the Board of Directors of the Rocky Mountain Bank" (Pet. No. 72-483, pp. 29-30).[23] As the court of appeals concluded (Pet. No. 72-483, App. A, p. 18), however, the trial court's thorough instructions adequately explained the applicable law. The error of petitioner's contention is obvious since he in effect contends that the jury should have been instructed that

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[22] In fact, the trial court concluded, on the basis of its own research, that Norman was not precluded as a prior convicted felon from obtaining a license (T. 1736-1737, 1808-1815, 1888-1898).

[23] The record does not indicate that this language was included in proffered instruction No. 19. Discussion of the instruction centered upon other language (T. 2422-2423).

if there were no concealment from the co-conspirators, there could have been no misapplication.

5. Petitioners Salazar and Delmar and Donald Cooper contend, relying upon *Kotteakos* v. *United States*, 328 U.S. 750, that their conspiracy convictions were improper because the proof at trial did not establish the existence of a single, general conspiracy, but rather several distinct conspiracies. But the evidence clearly established a relationship among the various transactions charged as both overt acts and substantive counts. For example, the Alpert-Cooper loan was used to repay an obligation of the Denver Revival Tabernacle, which was eventually transferred to the bank at an inflated price in satisfaction of the loan made to Paul Cooper and loans made to various Cooper brothers enterprises. Also, the balance on the Alpert-Cooper note was paid by the loan to Paul Cooper, which was "satisfied" by this transfer. Similarly, proceeds from the Wangsgard and Lakewood Medical Center loan were in part used to repay the Jensen loans.

6. The contentions of petitioners Donald Cooper and Salazar with respect to the propriety of the preparation of the superseding indictment and the failure to record the grand jury proceedings pose no issue warranting review and are fully answered in the opinion of the court of appeals, upon which we rely. See Pet. No. 72-525, App. A, pp. 10-13.

CONCLUSION

It is therefore respectfully submitted that the petitions for writs of certiorari should be denied.

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